

HARVEY E. YATES CO.

IBLA 82-1033, 83-225

Decided March 9, 1983

Appeals from decisions of New Mexico State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases. NM 53369, NM 54377.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases, and the Secretary is entitled to rely on its reasoned analysis.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

APPEARANCES: Thomas J. Hall, Esq., Roswell, New Mexico, for appellant; Robert J. Uram, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harvey E. Yates Company (HEYCO) has appealed the New Mexico State Office (NMSO), Bureau of Land Management (BLM), decision of May 25, 1982, which rejected HEYCO's high bid for parcel 5 offered in the April 27, 1982, sale of competitive oil and gas leases, and the decision of November 8, 1982, which rejected HEYCO's high bid for parcel 16 in the August 25, 1982, sale of competitive oil and gas leases. The reason given in each decision was that the HEYCO bid was less than the presale evaluation by the Minerals Management Service (MMS). Parcel 5 embraced the NE 1/4 sec. 25, T. 19 S., R. 24 E., New Mexico principal meridian, and parcel 16 embraced the S 1/2 SW 1/4 sec. 25, T. 19 S., R. 24 E., in the Daggar Draw Field, Eddy County, New Mexico.

Appellant states its bids were made after a comprehensive study of the Daggar Draw area, using logs from nearby wells. Four variables were utilized in its computer model: presence of a trapping mechanism; number of prospective pay zones; anticipated reservoir quality; and proximity of other production from the same zones. HEYCO's geologists developed a model which predicted a reservoir in the Morrow formation probably in the form of a stratigraphic trap of fluvial or channel sands. The logs of surrounding wells show great variation in the quality and thickness of the Morrow formation, so that one could drill and miss the reservoir by only a few hundred feet. The expected reservoir in parcel 5 would probably yield 2 BCF of gas, that in parcel 16 would probably yield 1.5 BCF.

HEYCO uses a privately developed risk analysis program which determined there would be a .44 chance of making a commercial Morrow well in parcel 5, and .46 chance in parcel 16. With more than .50 chance of drilling a dry hole, HEYCO could not justify spending more than \$212.85 per acre for parcel 5, and \$158.85 per acre for parcel 16.

HEYCO contends MMS made only a cursory analysis of the value of the area before recommending rejection of the HEYCO bids, and that MMS did not consider a key factor: the risk to the operator in drilling a Morrow test on each parcel. HEYCO complains that MMS based its recommendation on the four largest neighboring producers from the Morrow formation, and did not mention the more than 10 nearby wells which are only marginally successful.

HEYCO concedes the Government may reject any high bid, but argues that it is not rational to recommend rejection of a high bid without considering the geological risk involved in drilling a well. HEYCO contends competitive oil and gas leases should be sold at the fair market value and not at an arbitrary price determined by the Government. It suggests the fair market value is the price a willing buyer and a willing seller, neither of which is being forced, will trade. It asserts that its prospective bids were the actual fair market value of the parcels on the day of the sales.

Counsel for the Department has replied to the HEYCO statement of reasons. Counsel states that NMSO follows a two-step review process in determining whether or not to accept a high bid at a competitive oil and gas lease sale. First MMS is asked to review the bid and recommend acceptance or rejection. Upon receipt of the MMS recommendation, NMSO, in its Branch of Energy and Minerals, reviews the factual basis for the MMS recommendation.

The review in NMSO becomes the actual basis for the decision to reject the reaffirmed their original conclusions that the HEYCO bids were not adequate.

Counsel states that BLM has discretionary authority to reject a high bid, that the BLM policy is to seek fair market value for competitive oil and gas leases, and to reject all high bids which it considers less than fair market value. Counsel argues that both MMS and NMSO carefully reviewed all the factual data available to determine the fair market value. The decision of NMSO is entitled to considerable deference and should be overturned only if there is clear and convincing evidence to the contrary.

Counsel argues that BLM is not a willing seller until it determines that the high bid is not less than the fair market value. He suggests that HEYCO's argument that there are marginal wells nearby is meaningless without market data to show that such wells reduce what a company is willing to pay for a lease. Counsel asserts that MMS used the four variables suggested by HEYCO in its computer model, and derived a value in excess of \$1,300 per acre for parcel 5, and in excess of \$880 per acre for parcel 16.

[1] HEYCO recognized that the United States may reject a high bid offered as a bonus for a competitive oil and gas lease so long as there is a rational and reasonable basis for the rejection shown. The Secretary of the Interior has the discretionary authority to reject a high bid as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the high bid did not reflect fair market value for the parcel. Mary M. Gonzales, 67 IBLA 351 (1982); Harris-Headrick, 66 IBLA 84 (1982); Harold R. Leeds, 60 IBLA 383 (1981); Francis J. Richmond, 29 IBLA 137 (1977). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Harold R. Leeds, *supra*; Coquina Oil Corp., 29 IBLA 310 (1977).

[2] MMS is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at sale of competitive oil and gas leases and the Secretary is entitled to rely on the reasoned analysis of MMS. Mary M. Gonzales, *supra*; Harris-Headrick, *supra*; Harold R. Leeds, *supra*; Gerald S. Ostrowski, 34 IBLA 254 (1978). (MMS is the successor to the function of the Geological Survey referred to therein.) When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Mary M. Gonzales, *supra*; Harris-Headrick, *supra*; Southern Union Exploration Co., 41 IBLA 81 (1979).

Although HEYCO argues that the MMS recommendation was based only on the four exceptional producing wells in the vicinity, and ignored the more than 10 wells that are only marginally successful, we believe the MMS analysis is sound, especially as it used the variables suggested by HEYCO in its model and derived values much greater than either of HEYCO's bids.

[3] HEYCO contends that its bids did represent the fair market value of the parcel on the date of the sale. As we said in California Energy Co.,

63 IBLA 159, 163 (1982), involving a high bid for a geothermal resources lease offered at a competitive sale: "While lack of bids may on the one hand suggest that such bidders found parcel 20 to have little value, it could also reflect a determination by the companies to use finite financial resources on parcels more attractive to each company's particular plans." A lack of competitive interest offers very little evidence with regard to the actual fair market value of the land for oil and gas leasing. Mary M. Gonzales, supra; Harris-Headrick, supra; Harry Ptasynski, 48 IBLA 246 (1980).

Where a competitive oil and gas lease bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the Board has held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., 51 IBLA 149 (1980); Southern Union Exploration Co., supra. It is not required that the Secretary or his delegate prove that the bid is inadequate in order to support his decision to reject the bid in the exercise of his discretion, where he believes such action is necessary in the public interest. However, the record should be sufficient to establish that the decision was neither arbitrary or capricious. Gerald S. Ostrowski, supra; Kerr McGee Corp., 6 IBLA 108 (1972), aff'd, Kerr McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975).

In these cases, we find the documents provided for the record justify the rejection of HEYCO's bids. Its arguments on appeal are insufficient to overcome the weight which we properly accord to the findings of MMS as they relate to areas of technical expertise. See Gerald S. Ostrowski, supra. HEYCO's arguments represent its evaluation of the fair market value of the parcels, but do not represent definitive evidence which overcomes BLM's decision and its acceptance of the rationale and recommendations of MMS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge

